IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.718 OF 1990

1.Directorate of Insurance,
Maharashtra State.
2.The Commissionr
Kolhapur Municipal Corporation,
Kolhapur ...Appellants

vs.

1.Ramesh Bapusaheb Kalwalkar
2.Namdeo Basappa Nipanikar
3.New India Assurance Co.Ltd. ...Respondents

Mr.A.R.Patil,A.G.P. for State
Mr.D.S.Sawant for the Respondents.

CORAM: A.S.OKA,J.
DATE : JANUARY 17,2007.

ORAL JUDGMENT:

1. Heard learned Assistant Government Pleader for the Appellant and Shri D.S.Sawant for the first Respondent. The challenge in this Appeal is to the Judgment and Award dated 7th April 1990 passed by the learned Member of the Motor Accident Claims Tribunal, Kolhapur. By the said Judgment and Award, the claim petition filed by the first Respondent under the Motor Vehicles Act, 1939 was partly allowed. The Appellants were directed to jointly and severally pay the compensation of Rs.54,900/- to the first Respondent together with interest at the rate of 12% p.a. from the date of the Application i.e. 30th September 1987 till the date of the date of the payment along with proportionate costs.

2. The first Respondent claims to be an automobile mechanic. According to him he was running a workshop at Kolhapur by the

name Ramesh Auto Garage. He claims to be a Diploma Holder from the Industrial Training Institute of the State Government and he has undergone the specialised training in automobile repairs in TELCO, Jamshedpur. According to the first Respondent he had employed 5 to 6 employees in his garage and he was drawing an income of Rs.3,500/- per month from his business. Prior to starting the said business, he was employed with Warananagar Sugar Factory and was drawing the salary of Rs.2500/- per month.

3. On 1st April 1987 at about 4.30 p.m., the first Respondent was proceeding on his scooter from Kavala Naka to Kasaba Bavada Road. At the relevant time, a public transport bus of the Kolhapur Municipal Transport Corporation undertaking which was driven by the second respondent was proceeding on the same road ahead of the Respondent. According to the first Respondent, he was driving the scooter at a moderate speed by left side of the road. According to the case of the first Respondent when the bus came opposite Khanvilkar Bungalow, the second Respondent without any warning suddenly applied brakes as a result of which bus stopped suddenly. The first Respondent was taken by surprise. He tried to avoid the impact by turning his scooter towards the right side. However, his scooter dashed against the said bus. As a result, the first Respondent sustained injury on his left thigh and he suffered fracture to the left leg. Initially he was treated till 5th April 1987 in a hospital at Kolhapur.

Later on, he was shifted to Mission Hospital at Miraj. His left leg was required to be amputed above the knee. According to the first Respondent, the accident occurred due to negligence on the part of the second Respondent who was a driver of the bus. The second Appellant filed a written statement denying the claim. It was contended that the second Respondent stopped the bus at a bus stop. According to the second Appellant, the first Respondent was driving his scooter in a very high speed and that is the reason why he dashed on the rear side of the bus. The second Respondent filed a written statement contending that he had stopped the bus at the bus stop and it is the first Respondent who came in a very high speed and gave a dash to the bus. The first Appellant i.e. the Directorate of Insurance opposed the petition by filing a written statement. The third Respondent also filed the written statement. The fourth Respondent is the insurer of the scooter.

4. The learned Assistant Government Pleader has invited my attention to the evidence on record. He invited my attention to the evidence of the second Respondent which shows that he gave a signal by his right hand before slowing down the speed of the bus and only after giving signal he stopped the bus at the bus stop. He pointed out that that the first Respondent deposed that he was driving the scooter by extreme left side of the road and therefore, the first Respondent could not see the signal given by the driver of the bus. He submitted that

the second Respondent took all possible care before stopping the bus at the bus stop and the accident occurred due to negligence on the part of the first Respondent. He submitted that the quantum of compensation awarded is excessive and contrary to the evidence. The learned Advocate for the first Respondent supported the impugned Judgment and Award.

5. In paragraph No.3 of his deposition, the first Respondent has stated thus :

"3. The accident took place on 1-4-87 at about 4.00 p.m. near bungalow of Khanvilkar on Kavala Naka to Kasaba Bawada Road. At that time, I was going to Kasaba Bavada from Kavala Naka area by riding on my scooter bearing No.MXH-5312. I was driving my scotter by the left side of the road and within the speed of 25 to 30 km.p.h. At that time K.M.T. but was proceeding towards Kasaba Bavada side with excessive speed. I was behind it. Abruptly the said bus stopped. I tried to control my scooter for the purpose of avoiding the dash. I reduced the speed of my scooter and took it to right side of the said bus for avoiding the impact. I succeeded in doing it but in the process some part of my scooter brushed against the said bus and in the result I fell on the road...."

In the cross examination the first Respondent stated that he

noticed the bus for the first time when it was near Sadar Bazar. He stated that the distance between the said spot near Sadar Bazar and the spot of accident is about 400 to 500 feet. He stated that the distance between the extreme edge of asphalt road to left of his scooter might be of about 3 or 4 feet. He stated that the bus might be moving at the speed of 40 to 50 km.p.h. before the accident. He admitted that in his police statement he has not stated that the bus stopped abruptly. He stated that after he was admitted to the hospital of Dr.Nallulwar at Kolhapur, police from Shahuwadi Police station used to come four to five times a day. He stated that he was not in a position to give reply to their questions as he was in lot of pain and agony at that time. He stated that police took his signature on the written sheet of paper. He state that he was very much annoyed by the conduct of the police and therefore to avoid any harassment or trouble, he signed over the said sheet of paper. He admitted that as he was driving his scooter at the distance of 3 feet from the left edge of the road, he was not able to see the signal given by the driver of the bus.

6. It will be necessary to refer to the evidence of the second Respondent. In paragraph 1 of his deposition, he stated thus :

"....On 1-4-87 I was driving Bus No.MHL 9935 of K.M.T. from Shivaji Statue to Kadamwadi at about 4.00 p.m.

> The accident took place near Power Mala Stop. There is house of M.L.A. Shri Khanwilkar near the place of accident. I stopped my bus on Surve Diwan Stop and started ahead. I was driving my bus by my left side on the left side of the road. I was driving the bus speedily as conductor gave double bell. Then I slowed down my bus. I showed signal by taking out my right hand and moving my palm up and down. My bus was at a distance of 40 feet away from the stop when conductor gave the bell. There was no speedometer to my bus and therefore I cannot tell the speed of my bus. I stopped my bus near Power mala bus stop. Once scooterist dashed on my rear side of my bus. I got down from bus and saw that scooterist was lying on the road in injured condition...."

7. In the cross examination the Witness admitted that the double bell signal is given by the conductor to stop the bus and the single bell signal is for starting the bus. He stated that the distance between Surve Bungalow stop and Khanvilkar Bungalow stop is about 1000 feet. He stated that there was no need for the conductor to give signal to stop the bus at Khanvilkar bus stop. In examination in chief he stated that he stopped the bus at Surve Bungalow bus stop and started again. He stated that he was driving the bus speedily as the conductor gave a double bell. He slowed down his bus after

giving signal by his right hand by moving his palm up and down. He stated that he heard the bell when the bus was about 40 feet from the stop. So in examination in chief he came out with a case that he drove his bus speedily as the conductor has given a double bell. In cross examination he admitted that the double bell signal is given for stopping the bus. Conjoint reading of the statements made in examination in chief and the statements in cross examination show that after double bell signal was given by the conductor, the second respondent started driving the the bus in a speed and when the bus was at the distance of 40 feet from the stop, after hearing the bell given by the conductor he stopped the bus. Thus, it is obvious that the second Respondent stopped the bus stopped abruptly when the same was in considerable speed. That is precisely the case made out by the first Respondent in his evidence, The first Respondent in his evidence stated that he tried his level best to avoid the accident after the bus stopped suddenly. He stated that he tried to take the scooter on the right hand side and while doing so the scooter dashed against the bus.

8. On his own showing the second Respondent increased the speed after hearing the signal of the double bell and that is the reason why he was forced to stop the vehicle abruptly while he was approaching the bus stop opposite Khanvilkar Bungalow. In this view of the matter, no fault can be found with the finding of the learned Member of the Tribunal that

accident occurred due to negligence on the part of the bus driver.

9. So far as quantum of compensation is concerned, it will be necessary to refer to the evidence of Dr.Chandrakant Dattatraya Nallurwar, Dr.Arun Dinkar Phansopkar, and Shri Parsharam Shankarrao Jadhav. Dr.Chandrakant described the injuries sustained by the first Respondent. On the very day of the accident, the first Respondent was admitted in the hospital of Dr.Chandrakant. In the examination in chief itself Dr.Chandrakant stated that the first Respondent is liable to pay a sum of Rs.1,500/- by way of his fees and he has not received the said amount. Dr.Arun is the M.S.Orthopaedic Surgeon who treated the first Respondent at Walness Mission Hospital from 5th April 1987 onwards. He deposed as regards the bill amount paid by the first Respondent to the Walness Hospital. He stated that the first Respondent suffered from permanent disability of 40% to 45% He denied the suggestion that gangrene was set up as proper care of the first Respondent was not taken initially. He denied the suggestion that gangrene was developed because the wound was not properly taken care of.

10. The brother of the first Respondent deposed regarding the expenditure incurred by him on the medical treatment of the first Respondent by producing cash memo. He also deposed about the expenses incurred by him for procuring blood at the

time of surgery. Thus, the injury sustained by the first Respondent and secondly the amputation of the leg has been established by the first Respondent. Considering the occupation of the first Respondent and perusal of the certificate of permanent disability, the learned Member of the Tribunal awarded Rs.40,000/- on account of permanent disability. On account of pain and sufferings he has awarded Rs.5,000/-. For loss of earnings of two months he awarded only Rs.3,000/-. The grievance of the learned A.G.P. is as regards the non payment of fees payable to Dr.Chandrakant Nallurwar. The said Doctor has deposed that the fees of Rs.1500/- is due from the first Respondent. I find that the amount awarded by the Tribunal on account of loss of earning is extremely on the lower side. The evidence on record shows that the first Respondent was hospitalised for a considerably long time. He was hospitalised from 1st April 1987 to 15th April 1987 and he was under treatment of Dr.Arun Phansopkar till 26th June 1987. Considering this aspect and considering the nature of the injuries sustained by the first Respondent, the compensation of Rs.54,900/- fixed by the Trial Court is just and proper and the same cannot be said to be excessive.

11. There is no merit in the Appeal. Hence, I pass the following order :

i) Appeal is dismissed. The Appellants will pay costs of the Appeal to the first Respondent.

JUDGE